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October 23, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 07-57

Dear Ms. Dortch:

On October 18, 2007, an ex parte meeting was held with Michelle Carey, Senior Legal Advisor to Chairman Martin on the Commission's consideration of Media Bureau Docket No. 07-57.

The meeting was attended by Andrew Lowinger, President and CEO of U.S. Electronics, Inc., New York, New York (USE), and the undersigned, Senior Partner, Helein & Marashlian, LLC, McLean, Virginia, communications counsel to USE.

In the meeting, Mr. Lowinger provided additional information on the issues USE raised in its Comments filed in the Docket on August 10, its Reply Comments filed August 24, 2007 and its Petition to Defer Action filed October 12, 2007. Mr. Lowinger emphasized that the information he provided is based on his and his company's first hand experience over the past three years with the Applicants' sole sourcing practices as duopolists and on his 20 years experience in the design, development, and distribution of network communications devices and the manufacturing process that produces such devices and overall, 35 years in retailing in general with primary focus on a variety of consumer electronic products.

Mr. Lowinger advised that USE' concerns are not specifically over the merger's impact on the horizontal market of satellite radio, but on the adverse impact on the vertical or downstream market and how that impact is likely to expand after merger.

The key points presented included the need for conditioning the merger to prevent the merged entity from unduly influencing and ultimately controlling the downstream markets of manufacturing and distribution of satellite radio receivers and accessories. Emphasis was placed

on how both consumers and competition will be adversely affected by the merged entity's ability, if left unchecked, to use its monopoly power in both the horizontal and vertical satellite radio market to burden consumers with higher prices, lower quality, and less innovation.

Consumers could also be disadvantaged by other inherent characteristics of monopoly providers. One is to employ the most cost-efficient method of production and distribution. That is, the sole determinant for what products to provide will be to find the lowest cost alternatives in order to maximize profit margins. Should product developments lead to some lowering of production costs that are at least equal in quality to that of marginally acceptable products already in the field, those cost savings will not be passed on to consumers. Instead, those cost savings will be retained to increase profits or to seek and develop additional profit centers. Services and products become static, customer satisfaction minimal to non-existent. These conditions are followed by demands for government intervention to impose regulation to correct the discontent. All of these consequences are not only possible but probable in an unregulated, unconditioned monopoly environment.

Asked whether it was USE' position that the merger was not in the public interest, USE answered that in its opinion it would not be in the public interest to approve the merger without proper conditions. When asked what conditions it would impose, USE provided a copy of the conditions it specified in its Petition to Defer Action of October 12, 2007. For convenience, those conditions are restated hereinafter, namely, that the merged entity should:

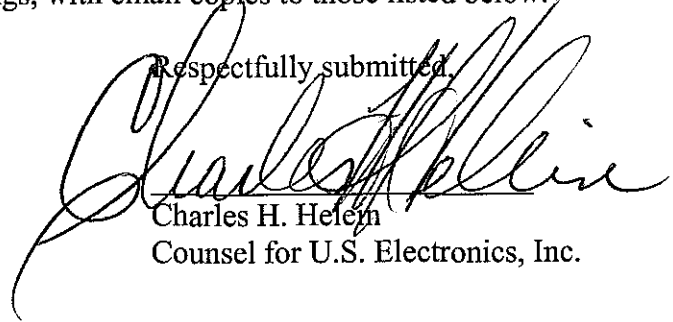
- Be barred from directly or indirectly engaging in or interfering with the design, manufacture or distribution of satellite radio receivers or other digital devices that can access the satellite radio network;
- Publish and make available information on the technical requirements and specifications of its network, including reasonably advanced notice of any changes to any qualified and willing partner;
- Not interfere with consumers' access to, or their choice of, devices by which to access the network;
- Comply with rules and regulations that provide for the compatibility of receivers to ensure that the satellite radio-using public has reasonable and non-discriminatory access to the satellite radio network;
- Comply with the FCC's policy that the public has the right to use any device to access and make use of the satellite radio network, consistent with the principles established in the *Hush-a-Phone* and *Carterfone* decisions -- as codified in Part 68 of the FCC's Rules, 47 C.F.R. Part 68; as well as the principles established under Section 629 of the Telecommunications Act of 1996, the FCC's implementing rules of Section 629, 76 C.F.R. §1200 et seq., and the Court's affirmation of the FCC's implementing regulations in *Charter Communications Company v. FCC*, 460 F.3d 31 (D.C. Cir. 2006); and importantly,
- Be subject to an independent monitor who will ensure compliance with FCC rules and regulations.

USE' Petition to Defer Action was briefly discussed. It was emphasized that not only did the novelty and complexity of the legal issues and factual circumstances support the need for additional time, but also the need to ensure development of a complete record on other critical issues such as vertical integration, the proposed conditions to be imposed, and the Applicant's record on regulatory compliance. These in turn create the need for additional information from

and disclosures by the Applicants. Here, USE suggested that a data request would be an appropriate vehicle to supplement the record, but that this would clearly seem to require deferring action on the merger. USE was then advised that a document request to the Applicants was being considered. USE volunteered to provide what information it had gained from its experiences that might be relevant to such a document request.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is submitted ECFS for inclusion in the public record of these proceedings, with email copies to those listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles H. Helein", is written over the typed name and title.

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cc: Michelle Carey (via email)